

Mary A Schott

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Clerk of Court



Entered on Docket
May 07, 2018

NVB 105-3 (Effective 1/17)

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

* * * * *

In re:) BK-S- 18-10577-mkn
)
ANTONIO MARTINEZ) CHAPTER 13
)
) **ORDER ON EX PARTE MOTION FOR**
) **REFERRAL TO MORTGAGE**
) **MODIFICATION MEDIATION**
) **PROGRAM**
Debtor(s).)

This matter came before the Court upon the Debtor's Ex Parte Motion for Referral to Mortgage Modification Mediation Program ("Ex Parte Motion") filed on

It is **ORDERED** as follows:

- 1 1. The Ex Parte Motion is granted. The non-moving party may seek reconsideration of
2 this Order by filing a written motion within fourteen (14) days after entry of the
3 Order. If a timely motion for reconsideration is filed, the party seeking
4 reconsideration must promptly schedule a hearing. In the event a motion for
5 reconsideration is timely filed, all deadlines set forth in this Order shall be suspended
6 pending resolution of the motion, but all other provisions shall remain in effect;
- 7 2. The Debtor and Lender are required to participate in Mortgage Modification
8 Mediation (“MMM”) Program in good faith and may be subject to possible sanctions
9 by the Court for violation of this requirement.;
- 10 3. The MMM Program proceedings in this case shall be completed no later than 150
11 days from the date of this Order, unless agreed to by the parties and the Mediator on
12 the Mortgage Modification Mediation Portal (“MMM Portal”) or extended by an
13 order of the Court;
- 14 4. All communications and information exchanged during MMM are privileged and
15 confidential and shall be inadmissible in any subsequent proceeding as provided by
16 Rule 408 of the Federal Rules of Evidence, except in circumstances of a motion for
17 failure to participate in good faith under the MMM Program and procedures and/or
18 subsequent mediation negotiation under this Chapter and/or the State of Nevada
19 Foreclosure Mediation Program;
- 20 5. Unless otherwise permitted by the Court or agreed by the parties and the Mediator,
21 all communication between the parties shall be sent exclusively through the MMM
22 Portal. Any litigated matters incidental to the mediation shall be considered as
23 separate matters and not subject to the MMM Portal communication requirement;
- 24

- 1 6. Within seven (7) days after entry of this Order, the Lender and, if applicable,
2 Lender's counsel shall register with the MMM Portal, unless already registered, and
3 provide to the MMM Portal vendor any forms or documents which Lender may
4 require to initiate a review under the MMM Program procedures. The MMM Portal
5 vendor shall post any such forms or documents to the Lender's profile on the MMM
6 Portal. If the Lender fails to timely register on the MMM Portal, the Debtor may file
7 a motion with the Court seeking sanctions against the Lender for failure to register;
- 8 7. Lender's counsel or representative shall have the authority (within the investor's
9 guidelines) to settle and will attend and continuously participate in all MMM
10 conferences in this case;
- 11 8. Debtor shall, within seven (7) days after entry of this Order, remit to the MMM
12 Portal vendor the required non-refundable MMM Portal submission fee, and upload
13 to the MMM Portal the following:
 - 14 a. Debtor's Prepared Package (prepared using the Document Preparation
15 Software); and
 - 16 b. a copy of this Order.
- 17 9. Debtor shall, within seven (7) days after entry of this Order, identify the assigned
18 Mediator on the MMM Portal;
- 19 10. Within fourteen (14) days after Lender provides the MMM Portal vendor with its list
20 of required mortgage modification documents and information, Debtor shall provide
21 Debtor's Completed Package to Lender through the MMM Portal;
- 22 11. The Lender shall, within seven (7) days after Debtor submits Debtor's Completed
23 Package on the MMM Portal, acknowledge receipt of Debtor's Completed Package
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1 on the MMM Portal and designate its single point of contact and outside legal
2 counsel (if any);

3 12. The Lender shall, within twenty-one (21) days after receiving Debtor's Completed
4 Package on the MMM Portal, determine whether any additional documents or
5 information is required to complete Lender's review of Debtor's mortgage
6 modification options.

7 a. Any request for additional documents or information must be made by Lender
8 through the MMM Portal within the twenty-one (21) day period set forth
9 above.

10 b. If no request for additional documents or information is made by Lender within
11 twenty-one (21) days, Debtor's Completed Package will be deemed perfected.

12 13. Lender shall timely review and underwrite the loan modification request, and
13 indicate on the MMM Portal that it has completed a review of Debtor's Completed
14 Package;

15 14. Lender shall indicate its final decision on the MMM Portal;

16 15. If the Lender transfers the loan, the Lender or Debtor shall promptly update the
17 MMM Portal to identify the new holder of the loan ("Successor Lender") The
18 Successor Lender shall:

19 a. Be obligated to comply with all terms of the Order, as well as the requirements
20 of Local Rule 3001(b);

21 b. Within seven (7) days of the transfer, acknowledge that it is the new holder of
22 the loan on the MMM Portal; and
23
24

- 1 c. Within twenty-one (21) days of the transfer, communicate to Debtor and the
2 Mediator on the MMM Portal whether any additional documents or
3 information are necessary to perfect Debtor's Completed Package.

4 16. SELECTION OF MEDIATOR:

- 5 a. The eligible Mediator identified in the Ex Parte Motion for Referral to
6 Mortgage Modification Mediation Program is hereby assigned as the Mediator
7 in this case;
- 8 b. Any objection to the assignment of this Mediator must be made on the MMM
9 Portal. The parties shall communicate and attempt to agree on a successor
10 Mediator within fourteen (14) days after identification of the assigned
11 Mediator on the MMM Portal. If the parties agree on a successor Mediator, the
12 objecting party shall file with the Court a Stipulation Assigning Successor
13 Mediator and concurrently lodge with the Court an Order approving the
14 Stipulation. Once the Stipulated Order is entered, Debtor shall promptly update
15 the MMM Portal to identify the successor Mediator of the case.
- 16 c. In the event the parties cannot agree on a successor Mediator, within fourteen
17 (14) days after identification of the assigned Mediator on the MMM Portal the
18 objecting party must file with the Court an Objection to Selection of Mortgage
19 Modification Mediation Program Mediator and set the matter for hearing
20 pursuant to Local Rule 9014. After notice and a hearing the Court shall select
21 the Mediator. Once a Mediator is assigned, Debtor shall promptly update the
22 MMM Portal to identify the Mediator of the case.
- 23 d. If the objecting party fails to file with the Court and notice for hearing an
24 Objection to Selection of Mortgage Modification Mediation Program Mediator

1 within fourteen (14) days after identification of the assigned Mediator on the
2 MMM Portal, the Mediator assigned under paragraph 16(a) of this Order shall
3 remain assigned to the case.

4 17. The Mediator shall be:

- 5 a. governed by the subject to the Model Standards of Conduct for Mediators as
6 adopted by the American Arbitration Association, American Bar Association,
7 and Association of Conflict Resolution;
- 8 b. compensated in the amount required pursuant to the MMM Procedures for
9 preparation for MMM, execution of required documents, facilitation of
10 document and information exchange between the parties, and participation in
11 two one-hour MMM conferences;
- 12 c. compensated for any MMM conferences beyond the initial two one-hour
13 sessions at such rate as may be agreed to in writing by the parties and the
14 Mediator;

15 18. The Mediator's fee shall be paid equally by the parties as follows:

- 16 a. The Debtor shall pay the non-refundable fee pursuant to the MMM Procedures
17 directly to the Mediator within seven (7) days after receiving initial contact and
18 payments instructions from the Mediator;
- 19 b. The Lender shall pay the non-refundable fee pursuant to the MMM Procedures
20 directly to the Mediator within seven (7) days after receiving initial contact and
21 payments instructions from the Mediator; and
- 22 c. The Mediator's fee for MMM conferences that extend beyond the initial two
23 one-hour conferences shall be paid equally by the parties, with payment made
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1 prior to the beginning of each successive MMM conference in accordance with
2 the MMM Program procedures.

3 19. The Mediator shall, within seven (7) days after being identified as the assigned
4 Mediator on the MMM Portal:

- 5 a. Log into the MMM Portal and confirm their assignment as the Mediator in the
6 case;
- 7 b. Provide the parties with contact information and instructions on how to pay the
8 Mediator's fee; and
- 9 c. Use the MMM Portal to facilitate any additional exchange of information or
10 documentation between Debtor and Lender in an effort to perfect the
11 documents needed for Lender to complete its analysis of Debtor's mortgage
12 modification mitigation options;

13 20. If the Mediator fails to timely register or log in to the MMM Portal to begin
14 facilitating the MMM process, any party to the mediation may file a motion
15 requesting that the Mediator be removed from this case and, if applicable, be
16 removed from the Clerk's Register of Mediators;

17 21. MEDIATION CONFERENCE:

- 18 a. The Mediator shall schedule the initial MMM conference to take place within
19 ninety (90) days after entry of this Order. The initial MMM conference may be
20 scheduled as soon as the Mediator determines that Lender has completed its
21 review of Debtor's Completed Package as required by Paragraph 13 of this
22 Order;
- 23 b. The Mediator may communicate with the parties in whichever manner the
24 parties and Mediator agree;

- c. After consultation with the parties, the Mediator shall fix a reasonable time and place for the MMM conferences;
- d. The Mediator shall give the parties at least 7 days' notice on the MMM Portal of the date, time, and place for the MMM conferences;
- e. The Mediator shall report the scheduling of any and all MMM conferences through the MMM Portal;
- f. The initial MMM conference shall not exceed one hour unless otherwise agreed by the parties and the Mediator;

22. In the event the parties are unable to reach an agreement and require an additional MMM conference, the Mediator shall schedule a final MMM conference to be held no later than thirty days after the conclusion of the initial MMM conference. The final MMM conference shall not exceed one hour in duration unless otherwise agreed by the parties and the Mediator;

23. In the event the parties reach a trial loan modification agreement:

- a. Within seven (7) days after the parties reach such an agreement the Mediator shall upload to the MMM Portal and file with the Court an Interim Report of Mortgage Modification Mediation Program Mediator.
- b. Within seven (7) days after the Mediator files the Interim Report with the Court:
 - i. Debtor shall file an Ex Parte Motion to Approve Trial Loan Modification Agreement.
 - ii. Debtor shall lodge with the Court an Order Approving Trial Loan Modification Agreement. The Court may grant such relief on an *ex parte* basis.

1 iii. Once entered by the Court, Debtor shall serve a copy of the Order on all
2 Required Parties and the Chapter 13 Trustee, and file a certificate of
3 service evidencing these parties were properly served.

4 c. The Mediator and all Required Parties shall monitor the trial loan modification
5 and manage the mediation until a final loan modification has been executed or
6 Lender has denied a final loan modification. Access to the MMM Portal shall
7 remain open during the pendency of a trial loan modification.

8 24. In the even the parties reach a final loan modification agreement:

9 a. Within seven (7) days after the parties reach such an agreement the Mediator
10 shall upload to the MMM Portal and file with the Court a Final Report of
11 Mortgage Modification Mediation Program Mediator.

12 b. Within fourteen (14) days after the Mediator files the Final Report with the
13 Court:

14 i. Debtor shall file a Motion to Approve Final Loan Modification
15 Agreement. If Debtor is represented by an attorney, this Motion may be
16 filed *ex parte* and Debtor shall concurrently lodge with the Court an
17 Order Approving Final Loan Modification Agreement, which the Court
18 shall grant on an *ex parte* basis. If Debtor is not represented by an
19 attorney, this Motion must be noticed, served, and set for a hearing
20 pursuant to Local Rule 9014 using a Notice of Hearing on Self-
21 Represented Debtor's Motion to Approve Final Loan Modification
22 Agreement.

23 ii. Once an Order Approving Final Loan Modification Agreement is entered
24 by the Court, either *ex parte* or after notice and hearing, Debtor shall

1 serve a copy of the Order on all Required Parties and the Chapter 13
2 Trustee, and file a certificate of service demonstrating these parties were
3 appropriately served.

4 c. Within twenty-eight (28) days after the final loan modification is approved
5 by the Court, Debtor shall file, serve, and notice for confirmation an
6 Amended Chapter 13 Plan or Modified Chapter 13 Plan providing for
7 conduit loan modification payments pursuant to Section III(A) of the MMM
8 Program Procedures, if the Chapter 13 Plan does not already contain such
9 provisions.

10 25. If the parties fail to reach an agreement at the conclusion of the MMM conferences:

11 a. Within seven (7) days after the conclusion of the MMM conferences the
12 Mediator shall upload to the MMM Portal and file with the Court a Final
13 Report of Mortgage Modification Mediation Program Mediator.

14 b. Within twenty-eight (28) days after the Mediator files the Final Report with
15 the Court, Debtor shall file, serve, and notice for confirmation an Amended
16 Chapter 13 Plan or Modified Chapter 13 Plan providing for appropriate
17 treatment of Lender's claim.

18 26. The automatic stay is modified to the extent necessary to facilitate MMM pursuant
19 to this Order;

20 27. Any of the deadlines imposed by this Order may be extended by order of the Court
21 or by written agreement of the parties and Mediator on the MMM Portal;

22 28. If any parties or their counsel fails to comply timely and in full with the terms of this
23 Order, the Court may impose appropriate sanctions after notice and a hearing;
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1 29. The Debtor shall immediately serve a copy of this Order on all parties to the
2 mediation, including the Mediator and the Chapter 13 Trustee. Debtor shall file a
3 Certificate of Service with the Court evidencing these parties were properly served.
4 Service shall be by regular U.S. Mail, electronic service, or email, if the party's
5 email address is known;

6 30. If Lender did not provide Debtor with written consent to entry of this Order, Debtor
7 shall:

- 8 a. Serve a copy of the Order on all Required Parties, including the assigned
9 Mediator and the Chapter 13 Trustee;
- 10 b. Include a copy of the Court's MMM Procedures as **Exhibit A**;
- 11 c. Include a copy of the Objection to Selection of Mortgage Modification
12 Mediation Program Mediator (NVB 105-4) as **Exhibit B**; and
- 13 d. File a Certificate of Service with the Court evidencing these parties were
14 properly served with the Order.

15 31. If this Chapter 13 case is dismissed, converted, or otherwise removed from the
16 District of Nevada prior to Debtor's completion of the MMM Program, the MMM
17 proceedings in the case will immediately terminate and the parties will be relieved of
18 the requirements of the MMM Program procedures;

19 **IT IS SO ORDERED.**

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21 Submitted by:

22
23 /S/ MICHAEL J. HARKER
24 Attorney for Debtor(s) or Pro Se Debtor

Dated: 05/07/2018

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